

DO NOT FILE COPY ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Petition for Rulemaking to Adopt the )  
Section 214 Process to the )  
Construction of Video Dialtone Facilities )  
 )  
Petition for Relief from Unjust and )  
Unreasonable Discrimination in the )  
Deployment of Video Dialtone Facilities )

RM-8491

RECEIVED

JUL 12 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**OPPOSITION OF GTE**

GTE Service Corporation and its affiliated  
domestic telephone operating companies

John F. Raposa, HQE03J27  
GTE Service Corporation  
P.O. Box 152092  
Irving, TX 75015-2092  
(214) 718-6969

Gail L. Polivy  
1850 M Street, N.W.  
Suite 1200  
Washington, DC 20036  
(202) 463-5214

July 12, 1994

Their Attorneys

## **SUMMARY**

GTE opposes the Petitions for several reasons. First, the Petitions seek to implement policies and procedures which are unnecessary and would further delay the introduction of competitive video services to the American people. Paradoxically, the practical impact of Petitioners' recommendations would be to delay the introduction of competitive video services to the very communities that they purport to represent. Second, Petitioners seek to impose these additional regulatory hurdles only upon potential video dialtone providers, not existing cable operators. This is more than ironic, since prospective video dialtone providers – the only real competition for entrenched cable interests – will be making video services available to the very communities which cable operators have often eschewed. Finally, there can be no doubt that GTE's own video dialtone proposals, as described in its Section 214 Applications filed on May 23, 1994, will make video services available to a broad cross-section of households within market clusters of GTE telephone exchange areas. GTE has proposed to provide video dialtone services in all central offices with the market clusters and will not discriminate against any subscriber segment. From GTE's perspective, as well as a matter of sound public policy, the Petitions request relief from a problem that simply does not exist.

In the Matter of )  
 )  
Petition for Rulemaking to Adopt the )  
Section 214 Process to the )  
Construction of Video Dialtone Facilities )  
 )  
Petition for Relief from Unjust and )  
Unreasonable Discrimination in the )  
Deployment of Video Dialtone Facilities )

GTE Service Corporation, on behalf of its affiliated domestic telephone companies (GTE), pursuant to Section 1.405(a) of the Commission's Rules,<sup>1</sup> respectfully submits this Opposition to the Petition for Relief and Petition for Rulemaking (Petitions) filed on May 23, 1994 by the Center for Media Education, the Consumer Federation of America, the Office of Communication of the United Church of Christ, the National Association for the Advancement of Colored People and the National Council of La Raza (Petitioners). As set forth in their Petitions, the proposals made by Petitioners would significantly undermine the Commission's video dialtone<sup>2</sup> policy and substantially impede deployment of one of the building blocks of the National Information Infrastructure. The Petitions should be denied.

<sup>2</sup> See *Telephone Company - Cable Television Cross-Ownership Rules*, Sections 63.54 - 63.58, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781 (1992) (*Video Dialtone Order*), *pets. for recon. pending, appeal pending sub nom. Mankato Citizens Telephone Co. v. Federal Communications Commission*, No. 92-1404 (D.C. Cir., Sept. 9, 1992).

## I. INTRODUCTION

Petitioners urge the issuance of specific policies and rules purportedly designed to deter potential "redlining" of low-income and minority neighborhoods in the deployment of video dialtone networks. Petitioners contend that the avoidance of low income and minority neighborhoods in the deployment of video dialtone networks is a discriminatory practice and inconsistent with the goal of universal service.

Purportedly to address this concern, the Petition for Relief requests that the Commission:

- (1) issue a policy statement announcing its commitment to the goal of universal video dialtone service and nondiscriminatory deployment at each phase of facilities construction;
- (2) issue an interpretive rule clarifying that applicants seeking to construct and operate video dialtone facilities are required to adhere to the objectives of universal service and the avoidance of discrimination; and
- (3) adopt a procedural rule instructing the Commission staff to identify and bring to its attention applications that appear to violate these objectives.

In addition to the imposition of these further regulatory burdens on the video dialtone process, the Petition for Rulemaking also requests that the Commission initiate a proceeding to amend the rules governing the consideration of video dialtone Section 214<sup>3</sup> applications. Petitioners urge that the rules be amended to include specific anti-redlining provisions which would require prospective video dialtone providers to make the service

---

<sup>3</sup> 47 U.S.C. § 214; 47 C.F.R. § 63.01 *et seq.*

available to a proportionate number of lower income and minority customers at each phase of deployment and include relevant census tract data on race, ethnicity and income for each exchange by NXX. Petitioners also urge that prospective video dialtone providers be required to give local public notice and hold public hearings to disclose the specifics of their video dialtone plans.<sup>4</sup>

**I. GTE'S VIDEO DIALTONE PROPOSALS PROVIDE ACCESS TO VIDEO SERVICES TO ALL SUBSCRIBERS ON A NON-DISCRIMINATORY BASIS**

On May 23, 1994, GTE submitted Section 214 applications<sup>5</sup> requesting authority to construct and operate video dialtone facilities in the states of California, Florida, Hawaii, and Virginia. GTE's video dialtone proposals are designed to achieve the objectives set forth by the Commission in its Video Dialtone Order: infrastructure improvement,

---

<sup>4</sup> Petitioners recommend that the public notice rules for video dialtone be modeled after those established for broadcasters. (Pet. for Rulemaking, at 3.) This recommendation is particularly odd since video dialtone providers have no editorial control over the programming delivered to subscribers. In fact, in GTE's proposed video dialtone offerings, programmers -- not end-user subscribers -- are GTE's customers. Consistent with the dictates of the *Video Dialtone Order*, GTE's local telephone companies will simply provide transport of the customer-programmers' video signals to the customer-programmers' subscribers.

<sup>5</sup> *Application of Contel of Virginia, Inc., doing business as GTE Virginia, for authority under Section 214 of the Communications Act of 1934, as amended, to construct, operate, own and maintain facilities and equipment to provide video dialtone in the Manassas, Virginia serving area*, No. W-P-C-6955; *Application of GTE Florida Incorporated for authority under Section 214 of the Communications Act of 1934, as amended, to construct, operate, own and maintain facilities and equipment to provide video dialtone in the Pinellas and Pasco Counties, Florida serving areas*, No. W-P-C-6956; *Application of GTE California Incorporated for authority under Section 214 of the Communications Act of 1934, as amended, to construct, operate, own and maintain facilities and equipment to provide video dialtone in the Ventura County, California serving area*, No. W-P-C-6957; *Application of GTE Hawaiian Telephone Co., Inc. for authority under Section 214 of the Communications Act of 1934, as amended, to construct, operate, own and maintain facilities and equipment to provide video dialtone in the Honolulu, Hawaii serving area*, No. W-P-C-6958.

increased competition in the delivery of video services and increased consumer choice.<sup>6</sup>

Within these markets, GTE will offer video services in all central offices within broad clusters of contiguous GTE telephone exchanges. GTE plans to pass over 500,000 homes within these markets by the end of 1995.

GTE's video dialtone offerings will extend to inner city neighborhoods, suburban communities, extensive retirement populations and military installations. Most importantly, the race, ethnicity and income demographics of GTE's initial serving areas will mirror the demographics of the community as a whole, since GTE will be providing services in all central offices within the market clusters.

GTE envisions that its video dialtone offerings will be among the first building blocks in the eventual provision of universal access to the benefits of the national information infrastructure. Investments made in network enhancements will not only foster job creation and retention, but will allow GTE to extend the benefits of rapid technological advancements to a wide cross-section of consumers within its serving areas. Implementation of video dialtone within these four serving areas is only the first step in the achievement of GTE's extensive video business objectives. GTE plans to expand video dialtone into a total of sixty-six markets throughout the nation, effectively providing competitive video services to approximately 7 million homes within the next 10 years.

The initiation of these aggressive video deployment plans must start with sensible selection criteria to determine initial service roll-out markets. GTE chose its initial four markets from all of its telephone serving areas based on a mix of different geographic and competitive profiles. These market areas were selected based on several key criteria -

---

<sup>6</sup> *Video Dialtone Order*, 7 FCC Rcd at 5787.

e.g., population density, the status of competition, and the ability of GTE affiliated programmers to provide their services. GTE analyzed and grouped contiguous exchange service areas into "market clusters" based on a "community of interest" standard. Three of the chosen markets -- California, Florida and Hawaii -- reflected population densities and existing competitive characteristics that indicated levels of consumer demand for video services that would warrant the introduction of a new competitor in the market. The fourth market -- Northern Virginia -- was selected on the basis of GTE's current ability to provide programming services directly to subscribers,<sup>7</sup> in addition to its density and competitive characteristics.

No exchange serving area, large or small, was excluded from or included in the chosen clusters based on any income, race or ethnicity criteria, nor did GTE target its video dialtone roll-out to only those exchanges with the most financially attractive customer base. In fact, subscribers in the markets selected for GTE's initial video dialtone roll-out are representative of a diverse set of income, race, ethnic and employment characteristics.

From the standpoint of rolling-out a competitive service offering -- such as video dialtone -- potential providers must ultimately base their plans on anticipated market demand, customer need and economic viability. GTE, like other potential providers, has relied upon a large variety of secondary published information sources to form initial assessments of market demand. In addition, GTE has begun, and will continue, to

---

<sup>7</sup> See *Chesapeake & Potomac Telephone Co. v. United States*, 830 F.Supp. 909 (E.D. Va. 1993), *appeal pending*, No. 93-2340 (4th Cir.). As noted in its Section 214 Applications, GTE is also challenging the Commission's enforcement of the video programming ban (47 U.S.C. § 533(b), 47 C.F.R. § 63.54(c)) in other markets. See *GTE California Incorporated v. Federal Communications Commission*, No. 93-70924 (9th Cir.)

conduct extensive primary research among potential customers to determine service and technical quality expectations, satisfaction with programming mix and alternatives, and demand for interactive and non-video entertainment services. These activities will ensure that investments made in both physical deployment and the provisioning of services will be as effective as possible in order to deliver video services to customers who desire and value them.

GTE remains committed to the goal of universal access to communications services for all Americans. Universal telecommunications service should be based on an essential set of services, not specific technologies, available to the public at a reasonable price. GTE's video deployment plans have been intentionally designed to increase the availability of a wide range of voice, video, and data services to its subscribers over time without discrimination based on any income, race or ethnicity criteria.

### **III. THE PETITIONS ARE UNNECESSARY SINCE THE COMMISSION'S EXISTING RULES ADEQUATELY PROTECT AGAINST DISCRIMINATION AND PROMOTE THE GOALS OF UNIVERSAL SERVICE**

The Petition for Relief requests that the Commission adopt policy statements and interpretive and procedural rules to ensure prospective video dialtone provider avoidance of discrimination. Simply stated, the Petition is unnecessary. The Commission is already empowered to take any reasonable action it deems necessary to remedy discriminatory conduct. The Section 214 and tariff review processes provide more than adequate opportunities for review of proposed video dialtone offerings and for the Commission to



order any revision to such offerings if they are deemed to be in violation of its Rules or the Act.<sup>8</sup>

As Petitioners recognize, the Commission has an obligation to ensure that requests submitted under Section 214 are in the public interest. Indeed, Section 63.01(l) of the Commission's Rules<sup>9</sup> requires applicants to demonstrate that construction of new network facilities satisfies a tangible public need. In addition, tariffs filed for video dialtone services must conform to the anti-discrimination provisions of Section 202(a) of the Act<sup>10</sup> which requires that tariffed services be generally available within the applicant's serving territories. With these arrows already existing in the Commission's regulatory quiver, GTE believes that it is neither necessary nor prudent for the Commission to issue additional policy statements or interpretive rules with respect to pending video dialtone applications. More than adequate opportunities exist for the Commission to address any potential violation of its Rules or the Act.

#### **IV. THE COMMISSION SHOULD ELIMINATE, RATHER THAN EXPAND, RELIANCE ON THE SECTION 214 PROCESS TO REVIEW VIDEO DIALTONE PROPOSALS**

The Petition for Rulemaking requests that the rules governing the Section 214 process be amended to include specific anti-redlining provisions. GTE is opposed to any

---

<sup>8</sup> Given the innumerable challenges raised to pending video dialtone applications (particularly by entrenched cable interests), and the backlog that this has created, there can be no doubt that interested parties have abundant occasion to bring every conceivable objection which they can devise. Moreover, in its *Video Dialtone Order*, the Commission has already declined to independently state an objective of universal service, as proposed by some commentators. *Video Dialtone Order*, 7 FCC Rcd at 5806 (¶ 47).

<sup>9</sup> 47 C.F.R. § 63.01(l).

<sup>10</sup> 47 U.S.C. § 202(a).

rulemaking proceeding which would impose additional regulatory barriers and discourage entry into the video marketplace by alternative video service providers. Such requirements merely serve to confirm the monopoly positions of entrenched cable interests. Specifically, adding new requirements to the Section 214 process, as Petitioners propose, would only further delay the approval of pending and prospective video dialtone applications.

The Commission's 214 process is indeed a poor vehicle for addressing resolved video dialtone issues and it is a particularly faulty mechanism to promote competition in the video services marketplace. Rather than streamline entry for alternative providers, the Section 214 process has essentially been an insurmountable roadblock. For instance, anticipated approval of some video dialtone applications are now approaching the two year mark.<sup>11</sup> Coupled with the notice period required for tariff filing, the anticipated challenges to proposed tariffs by the cable industry, and the potential that such tariffs can be deferred for up to 120 days, the Commission's existing processes are slowing the delivery of advanced video services to the American public. The adoption of yet another set of regulatory hurdles, as proposed by petitioners, would only compound the problem.

Rather than rely on the Section 214 application procedure to evaluate video dialtone services, the Commission should either streamline the process or, more appropriately, abandon it completely. Oversight of new video services can adequately be fulfilled by the Commission's tariff approval procedures. The tariff process allows the

---

<sup>11</sup> See, e.g., May 10, 1994 correspondence from Hon. Gary Condit, chairman of the Information, Justice, Transportation and Agriculture subcommittee of the House Committee on Government Operations to Hon. Reed Hundt, FCC chairman. On July 6, 1994, the Commission announced that the application of New Jersey Bell to provide video dialtone service in Dover Township, New Jersey, -- which application has been pending for nearly two years -- would finally be approved.

Commission to investigate whether any exchange carrier filings violate Commission rules or policies, including whether the proposed offering would provide undue preferences for any category of subscriber. In addition, the tariff review process is open to public comment and review, providing Petitioners -- and all other interested participants -- with opportunity to comment on any aspect of the prospective video dialtone provider's filing.

Petitioners have not offered any evidence that warrants the initiation of yet another rulemaking proceeding that would delay competition in the video services marketplace. As noted above, the Commission has sufficient authority under existing law to enforce the anti-discrimination provisions of the Act. Moreover, as specific to GTE, it is irrefutable that GTE's own video dialtone proposals do not discriminate among subscribers. GTE's Section 214 applications demonstrate on their face that its video dialtone plans are not discriminatory and do not extend preferences to any specific subscriber group. GTE submits that the goals of universal service can be achieved if prospective video dialtone providers are allowed to design and deliver competitive video services to consumers based on the demands of the marketplace. Since these services are being introduced in a competitive environment, it is crucial that regulatory barriers not be erected which would curtail the very competition with entrenched cable interests that video dialtone can provide.

Petitioners do raise one valid point, however, but one which GTE is already addressing. GTE agrees with Petitioners that local communities should be involved in the implementation plans for video dialtone networks. In GTE's case, GTE has contacted local officials in the communities affected by its video dialtone proposals and is already working with the appropriate community representatives to address any local concerns.

This is simply a matter of good business; it is not one for the imposition of yet another regulatory requirement.

**V. PETITIONERS WOULD IMPOSE ADDITIONAL REGULATORY HURDLES ON THE VERY ENTITIES WHICH WILL PROVIDE COMPETITION IN THE VIDEO MARKETPLACE. CABLE OPERATORS WOULD BE FREE TO CONTINUE THEIR REDLINING PRACTICES.**

Incongruously, Petitioners demand the imposition of additional regulatory hurdles on the only potential competition which cable interests will face for the foreseeable future. While cable operators have been accused for years of redlining, Petitioners' proposals do nothing to address this problem. Rather, Petitioners' proposals would only stifle the competitive environment from which all consumers -- regardless of race, ethnicity, income or other factors -- will benefit. Indeed, the additional delays in implementing video dialtone proposals which would necessarily result from acceptance of Petitioners' proposals would have the direct effect of retarding the deployment of technological advancements to the very subscribers which Petitioners claim to represent.

As GTE has stressed repeatedly,<sup>12</sup> the overriding policy goal for the Commission as the voice and video marketplaces converge must be the achievement of regulatory parity. Two primary objectives, the efficient allocation of resources and the avoidance of barriers to entry, compel symmetrical regulation. In particular, the Commission should avoid regulating either the voice or video marketplaces in isolation. To do otherwise would be to

---

<sup>12</sup> See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation; and Adoption of a Uniform Accounting System for Provision of Regulated Cable Service*, MM Dkt. 92-266, MM Dkt. 93-215, CS Dkt. 94-28, GTE Comments, Jan. 27, 1993; GTE Reply Comments, Feb. 11, 1993; GTE Comments to Petitions for Reconsideration, June 16, 1994; *Price Cap Performance Review for Local Exchange Carriers*, CC Dkt. 94-1, GTE Comments, May 16, 1994; GTE Reply Comments, June 29, 1994.

establish de facto barriers to entry and significantly impede the deployment of the national information infrastructure. Contrary to these objectives, Petitioners' proposals attempt to regulate the video services marketplace in a manner which isolates video dialtone providers vis-a-vis cable operators. This is entirely inconsistent with the Commission's goal of achieving regulatory parity.

## **VI. CONCLUSION**

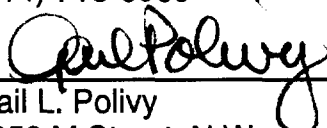
For the reasons stated hereinabove, GTE respectfully urges the Commission to deny the Petitions. Petitioners' proposals would only undermine the Commission's video dialtone policy and impede deployment of the national information infrastructure.

Respectfully submitted,

GTE Service Corporation and its affiliated  
domestic telephone operating companies

John F. Raposa, HQE03J27  
GTE Service Corporation  
P.O. Box 152092  
Irving, TX 75015-2092  
(214) 718-6969

By

  
\_\_\_\_\_  
Gail L. Polivy  
1850 M Street, N.W.  
Suite 1200  
Washington, DC 20036  
(202) 463-5214

July 12, 1994

Their Attorneys

## Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Opposition of GTE" have been mailed by first class United States mail, postage prepaid, on the 12th day of July, 1994 to the following parties:

Angela J. Campbell  
Citizens Communications Center Project  
Institute for Public Representation  
Georgetown University Law Center  
600 New Jersey Avenue, NW  
Washington, DC 20001

Andrew Jay Schwartzman  
Media Access Project  
2000 M Street, NW  
Washington, DC 20036

Peggy Reitzel\*  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW  
Room 544  
Washington, DC 20554



Ann D. Berkowitz

\* By Hand